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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of:

Scott E. ANDERSEN *et al.*

Appl. No.: 10/020,338

Filed: December 12, 2001

Title: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Confirmation No. 1682

Art Unit: 1631

Examiner: James MARTINELL

Atty. Docket: 16517.282/38-21(52272)B

**Request to Rescind Prior Request and Certification
Under 37 C.F.R. § 1.213(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED

DEC 09 2003

TECH CENTER 1600/2900

Attn: Mail Stop Petition

Sir:

Applicants hereby request that the Request for Non-Publication and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) filed on December 12, 2001, in the above-captioned U.S. application be rescinded in accordance with 37 C.F.R. § 1.213(b).

On December 12, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to the invention disclosed in the above-captioned U.S. application, were previously filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on April 13, 2001 (the "Foreign Application").

12/05/2003 RNEBRAHT 00000133 502387 10020338
01 FC:1460 130.00 DA

Adjustment date: 04/09/2004 SDIRETA1
01/07/2004 TFCUNNET 00000001 502387 10020338
01 FC:1460 130.00 CR

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Scott E. ANDERSEN *et al.*

Art Unit: 1631

Appln. No.: 10/020,338

Examiner: James MARTINELL

Filed: December 12, 2001

Publication No.: 1682

For: Nucleic Acid Molecules and
Other Molecules Associated with
Plants

Docket: 16517.282/38-21(52272)B

Request for Refund of Improper Charge to Deposit Account

Mail Stop 16

via FACSIMILE

Director of the U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Applicant respectfully requests a refund of an improper charge for the following reason:

On December 3, 2003, Applicants filed a Request to Rescind Prior Request and Certification under 37 C.F.R. § 1.213(b), a Petition for Express Abandonment under 37 C.F.R. § 1.138(c) in Order to Avoid Publication, and authorized payment of the relevant fee of \$130, from Deposit Account 50-2387. The fee was charged twice to Deposit Account 50-2387 on December 5, 2003 and again on January 7, 2004 (see attached copies of the December 2003 and January 2004 deposit account statements).

Courtesy copies of a transmittal letter dated December 3, 2003, a request to rescind prior request and certification under 37 C.F.R. § 1.213(b) dated December 3, 2003, including exhibit A, a petition for express abandonment under 37 C.F.R. § 1.138(c) in order to avoid publication dated December 3, 2003, and a postcard receipt date stamped on December 3, 2003, are attached for your convenience.

Application No. 10/020,338
Scott E. ANDERSEN *et al.*
Page 2

Since Applicants have been charged twice for the same filing, Applicants hereby request a refund in the amount of \$130.00 be credited to Deposit Account No. 50-2387, referencing matter number 16517.282. A duplicate of this Request is enclosed for this purpose.

Respectfully submitted,



David R. Marsh (Reg. Attorney No. 41,408)
Holly Logue Prutz (Reg. Attorney No. 47,755)

Date: March 31, 2004

Correspondence Address:

Monsanto Company
800 N. Lindbergh Blvd.
Mailzone E2NA
St. Louis, MO 63167
(314) 694-3602 telephone
(314) 694-9009 facsimile

Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
(202) 942-5000 telephone
(202) 942-5999 facsimile

ARNOLD & PORTER

COPY

Holly Logue Prutz
Holly.Prutz@porter.com
202.942.5243
202.942.5999 Fax
555 Twelfth Street, NW
Washington, DC 20004-1208

December 3, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Mail Stop Petition

Re: U.S. Patent Application No. 10/020,338
Filed: December 12, 2001
Title: Nucleic Acid Molecules and Other Molecules Associated
with Plants
Applicants: Scott E. ANDERSEN *et al.*
Atty. Docket: 16517.282

Sir:

The following documents are forwarded herewith for appropriate action by the U.S.
Patent and Trademark Office (PTO):

1. a Request to Rescind Prior Request and Certification under 37 C.F.R. § 1.213(b), including an Exhibit A—copy of Request and Certification under 35 U.S.C. 122(b)(2)(B)(i);
2. a Petition for Express Abandonment under 37 C.F.R. § 1.138(c) in Order to Avoid Publication, including an Exhibit A—copy of Request and Certification under 35 U.S.C. 122(b)(2)(B)(i), (in duplicate); and
3. a return postcard.

Please stamp the attached postcard with the filing date of these documents and return it to our courier.

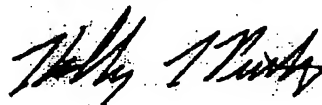
Applicants request that the \$130.00 Petition fee be charged to Deposit Account No. 50-2387, referencing docket number 16517.282.

ARNOLD & PORTER

Commissioner for Patents
Atty. Docket: 16517.282
December 3, 2003
Page 2

Applicants do not believe any fees, other than the above fee (\$130), are due in conjunction with this filing. However, if any fees under 37 C.F.R. §§ 1.16 or 1.17 are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter Deposit Account No. 50-2387, referencing matter number 16517.282. A duplicate copy of this letter is enclosed.

Respectfully submitted,



Holly Logue Prutz (Reg. Attorney No. 47,755)
David R. Marsh (Reg. Attorney No. 41,408)

Attachments

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY

In re application of:

Scott E. ANDERSEN *et al.*

Appl. No.: 10/020,338

Filed: December 12, 2001

Title: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Confirmation No. 1682

Art Unit: 1631

Examiner: James MARTINELL

Atty. Docket: 16517-282/38-21(52272)B

**Request to Rescind Prior Request and Certification
Under 37 C.F.R. § 1.213(b)**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**Attn: Mail Stop Petition**

Sir:

Applicants hereby request that the Request for Non-Publication and Certification Under 35 U.S.C. §122(b)(2)(B)(i) filed on December 12, 2001, in the above-captioned U.S. application be rescinded in accordance with 37 C.F.R. § 1.213(b).

On December 12, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to the invention disclosed in the above-captioned U.S. application, were previously filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on April 13, 2001 (the "Foreign Application").

Scott E. ANDERSEN *et al.*

Appl. No. 10/020,338

Page 2

Therefore, Applicants believe that the certification made under 35 U.S.C. § 122(b)(2)(B)(i) filed in the above-captioned application may be incorrect. Accordingly, Applicants wish to rescind the request for non-publication filed on December 12, 2001, for the above-captioned U.S. application. Applicants believe the certification made in the above-captioned U.S. Application may be incorrect because the Foreign Application is related to one or more nucleic acid or amino acid sequences, or both, that exhibit at least 85% sequence identity over 80% of their length to one or more nucleic acid or amino acid sequences, or both, disclosed in the above-captioned U.S. Application.¹

In light of the above, Applicants hereby explicitly notify the Office of the filing of the Foreign Application on April 13, 2001, and rescind the request for non-publication submitted in U.S. Application Serial No. 10/020,338 pursuant to 37 C.F.R. § 1.213(b). Applicants assert that any incorrect certification made under 35 U.S.C. § 122(b)(2)(B)(i) was inadvertent.

¹ Applicants make no assertion as to whether nucleic acid sequences or amino acid sequences that exhibit at least 85% identity over 80% of their length either are or are not an "invention disclosed in the application" within the meaning of 35 U.S.C. § 122.

Scott E. ANDERSEN *et al.*
Appl. No.: 10/020,338
Page 3

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below.

Respectfully submitted,



Holly Logue Prutz (Reg. Attorney No. 47,755)
David R. Marsh (Reg. Attorney No. 41,408)

ARNOLD & PORTER
555 Twelfth Street, NW
Washington, D.C. 20004-1206
(202) 942-5000 telephone
(202) 942-5999 facsimile

Date: December 3, 2003

Correspondence Address:

MONSANTO COMPANY
800 N. Lindbergh Blvd.
Mailzone E2NA
St. Louis, MO 63167
(314) 694-3602 telephone
(314) 694-9009 facsimile

COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Scott E. ANDERSEN *et al.*

Appl. No.: 10/020,338

Filed: December 12, 2001

Title: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Confirmation No. 1682

Art Unit: 1631

Examiner: James MARTINELL

Atty. Docket: 16517.282/38-21(52272)B

**Petition for Express Abandonment Under 37 C.F.R. § 1.138(c)
In Order to Avoid Publication**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**Attn: Mail Stop Petition**

Sir:

Applicants hereby petition for express abandonment of U.S. application Serial No. 10/020,338 under 37 C.F.R. § 1.138(c) as of the filing date granted to child application Serial No. 10/703,032, filed November 6, 2003, naming David K. Kovalic, Scott E. Anderson, Joseph R. Byrum, Timothy W. Conner, James D. Masucci, and Yihua Zhou as inventors and having Attorney Docket No. 38-21(53374)B (the "Child Application"), for purposes of avoiding publication of the above-captioned U.S. application. Authorization to charge the official fees for this Petition is given in the accompanying transmittal letter. A duplicate copy of this Petition is enclosed.

On December 12, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to

Scott E. ANDERSEN *et al.*
Appl. No. 10/020,338
Page 2

the invention disclosed in the above-captioned U.S. application, were previously filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on April 13, 2001 (the "Foreign Application").¹

Applicants hereby petition for express abandonment of U.S. Application Serial No. 10/020,338 under 37 C.F.R. § 1.138(c) as of the filing dates granted to the Child Application, for purposes of avoiding publication of the above-captioned U.S. application.²

The above-captioned U.S. application contains multiple sequences, only some of which may meet the criteria such that those sequences may be considered to be the "invention disclosed" within the meaning of 35 U.S.C. § 122. However, in lieu of submitting a redacted copy of the above-captioned U.S. application, provided for under 35 U.S.C. § 122 (b)(2)(B)(v), Applicants have elected to pursue the present course of action of refiling the less extensive Child Application, which contains only those sequences which may be disclosed in the Foreign Application without a request for non-publication.

¹ Where more than one application was filed in another country or under a multilateral agreement, only the date for the earliest-filed foreign application is recited herein.

² In the accompanying papers filed herewith, Applicants have explicitly notified the Office of the filing of the Foreign Application on April 13, 2001, and recited the non-publication request filed in the U.S. Application.

Scott E. ANDERSEN *et al.*
Appl. No. 10/020,338
Page 3

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below. The undersigned is an attorney of record, or an attorney acting in a representative capacity for Applicants by virtue of being named in the transmittal papers accompanying the above-referenced child applications, and therefore has authority to petition for abandonment of the above-captioned U.S. application in favor of the above-referenced child applications pursuant to 37 C.F.R. § 1.138(b), 1.33(b), and 1.34(a).

Respectfully submitted,

Lawrence M. Lavin, Jr.

Lawrence M. Lavin, Jr. (Reg. No. 30,768)
by David R. Marsh (Reg. No. 41,408)
by Holly Logue Prutz (Reg. No. 47,755)

by Holly Logue Prutz

Date: December 3, 2003

MONSANTO COMPANY
800 N. Lindbergh Blvd.
Mailzone E2NA
St. Louis, MO 63167
(314) 694-3602 telephone
(314) 694-9009 facsimile

EXHIBIT A

COPY

PTO/SB/35 (11-00)

Approved for use through 10/31/2007. OMB 0631-0031

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no person shall be required to furnish information if it is a collection of information that has not been approved by the Office of Management and Budget.

REQUEST AND CERTIFICATION
UNDER

35 U.S.C. 122(b)(2)(B)(i)

First Named Inventor

Scott E. Anderson

Title

NUCLEIC ACID MOLECULES AND OTHER MOLECULES ASSOCIATED
WITH PLANTS

Attorney Docket No.

35-21(02272)B

I hereby certify that the invention disclosed in the attached application has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. I hereby request that the attached application not be published under 35 U.S.C. 122(b).

12/12/01
Date

Laurence M. Lavin Jr.
Reg No 307968

LAURENCE M. LAVIN JR
Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b) and submitted with the application upon filing.

Applicant may rescind this nonpublication request at any time. If applicant rescinds a request that an application not be published under 35 U.S.C. 122(b), the application will be scheduled for publication at eighteen months from the earliest claimed filing date for which a benefit is claimed.

If applicant subsequently files an application directed to the invention disclosed in the attached application in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant must notify the United States Patent and Trademark Office of such filing within forty-five (45) days after the date of the filing of such foreign or international application. Failure to do so will result in abandonment of this application (35 U.S.C. 122(b)(2)(B)(iii)).

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(a). The information is used by the public to request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that request). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual cases. Any comments on the amount of time you required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patent, Box Patent Application, DC Washington, DC 20231.

COPY

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. Decision No. 16517.282
Date December 5, 2001Conf. No. 1682
Art Unit 1601
Examiner JAMES MARTINELL

Applicant(s): Scott E. ANDERSEN et al.

Appin. No.: 10/020,338

Filing Date: December 12, 2001

Title: Nucleic Acid Molecules and Other Molecules Associated with Plants

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Attn: Mail Stop Petition

Sir:

Please place the U.S. Patent & Trademark Office receipt stamp hereon to acknowledge receipt of the following:

1. a Transmittal Letter (in duplicate);
2. a Request to Rescind Prior Request and Certification under 37 C.F.R. § 1.213(b), including an Exhibit A—copy of Request and Certification under 35 U.S.C. 122(b)(2)(B)(i);
3. a Petition for Express Abandonment under 37 C.F.R. § 1.138(c) in Order to Avoid Publication, including an Exhibit A—copy of Request and Certification under 35 U.S.C. 122(b)(2)(B)(i), (in duplicate); and
4. a return postcard.

Return postcard to: Holly Logue Prutz (Room 985)

Deposit Account Statement

COPY



United States
Patent and
Trademark Office

Return To:

USPTO
Harris
PageFinance
Harris
Page

Deposit Account Statement

Requested Statement Month:

December 2003

Deposit Account Number:

502387

Name:

ARNOLD & PORTER

Attention:

VIRGINIA BIRCH-IP DOCKET OFFICE

Address:

655 12TH STREET, NW

City:

WASHINGTON

State:

DC

Zip:

20004-1206

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
12/01	62	10020338	38-21(52272)	1201	\$86.00	\$57,753.00
12/01	63	10021323	38-21(52274)	1201	\$86.00	\$57,867.00
12/01	679	78334481		7001	\$335.00	\$57,332.00
12/01	756	78334527		7001	\$335.00	\$56,997.00
12/02	719	75587775		7004	\$150.00	\$56,847.00
12/02	870	78334897		7001	\$335.00	\$56,512.00
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12/04	111	60525825	19026.003	1005	\$160.00	\$52,667.00
12/04	220	09850147	16517.231	1453	\$1,330.00	\$51,337.00
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12/05	1161	1789971		7208	\$100.00	\$47,782.00
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12/05	1216	75426622		7004	\$150.00	\$47,482.00

Deposit Account Statement

COPY


**United States
Patent and
Trademark Office**

Deposit Account Statement

Requested Statement Month:

January 2004

Deposit Account Number:

502387

Name:

ARNOLD & PORTER

Attention:

VIRGINIA BIRCH-IP DOCKET OFFICE

Address:

605 12TH STREET, NW

City:

WASHINGTON

State:

DC

Zip:

20004-1206

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
01/05	45	09754853	04983.0216	1453	\$1,330.00	\$36,825.00
01/05	99	09692412	18517.127	1252	\$420.00	\$36,405.00
01/06	1	09865419	18517.001/518358	1460	\$130.00	\$36,275.00
01/06	181	10629649	18528.588CIP	1051	\$130.00	\$36,145.00
01/06	913	78120790		7003	\$100.00	\$36,045.00
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01/07	1	10020338	38-21(52272)	1460	\$130.00	\$34,895.00
01/07	2	10077983	16827.021	1504	\$300.00	\$34,595.00
01/07	3	10077983	16827.021	6001	\$9.00	\$34,604.00
01/07	63	PAYMENT		8203	-\$17,188.00	\$51,794.00
01/07	86	10126513	13587.348	1501	\$1,330.00	\$50,464.00
01/07	87	10126513	13587.348	1504	\$300.00	\$50,164.00
01/07	145	10647517		8021	\$40.00	\$50,124.00
01/08	678	1815662		7206	\$100.00	\$50,024.00
01/08	679	1815662		7201	\$400.00	\$49,624.00
01/09	45	60513588	18477.008/637.P	1052	\$50.00	\$49,574.00
01/09	848	75772705		7003	\$300.00	\$49,274.00
01/09	847	75693982		7003	\$100.00	\$49,174.00
01/09	853	75693991		7003	\$100.00	\$49,074.00
01/12	186	09591279	15597/01/US	1251	\$110.00	\$48,964.00
01/12	187	09591279	15597/01/US	1202	\$252.00	\$48,712.00
01/12	240	09531113	38-21(157810	1401	\$330.00	\$48,382.00
01/12	842	2128411		7206	\$100.00	\$48,282.00
01/12	843	2128411		7208	\$200.00	\$48,082.00
01/12	846	2130048		7205	\$100.00	\$47,982.00
01/12	847	2130048		7208	\$200.00	\$47,782.00
01/12	1130	2130047		7206	\$100.00	\$47,682.00
01/12	1131	2130047		7208	\$200.00	\$47,482.00

OFFICE OF FINANCE
REFUND BRANCH

ARNOLD & PORTER LLP MAR 23 2004 FAX

US PATENT & TRADEMARK OFFICE
WASHINGTON, DC 20004-1208

Fax Transmittal

March 31, 2004

RECIPIENT NAME(S)	RECIPIENT FAX NUMBER(S)	RECIPIENT TELEPHONE NUMBER(S)	RECIPIENT ROOM #(S)
Director of the U.S. Patent and Trademark Office Attn: Refund Request Branch	(703) 308-5077	(703) 305-4229	
SENDER	SENDER'S TELEPHONE NUMBER	SENDER'S ROOM NUMBER	
Holly Logue Prutz, Reg. No. 47,755	(202) 942-5243	985	
CLIENT/MATTER NUMBER	TIMEKEEPER NUMBER	NUMBER OF PAGE(S)	
Atty. Docket No.: 16517.282/38-21(52272)B	4998	We are transmitting 18 page(s) (Including this cover sheet)	
TRANSMISSION DEADLINE (DATE & TIME)		ALTERNATE TELEPHONE NUMBER (OPTIONAL)	
This document must be transmitted no later than: March 31, 2004 - ASAP		Alternate telephone number at which the sender can be reached if there are difficulties with this fax: (202) 942-6473	
If you experience difficulty receiving this fax transmission, please contact the operator at 202.942.5837.			
Applicants: Scott E. ANDERSEN <i>et al.</i> Appl. No.: 10/020,338 Filing Date: December 12, 2001 Title: Nucleic Acid Molecules and Other Molecules Associated with Plants		Transmitted herewith is: a Transmittal Letter; a Request for Refund of Improper Charge to Deposit Account (in duplicate); courtesy copies of a transmittal letter; a request to rescind prior request and certification; a petition for express abandonment in order to avoid publication; a postcard receipt date-stamped by OIPE dated December 3, 2003; and deposit account statements for Deposit Account No. 50-2387 dated December 2003 and January 2004.	

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ARNOLD & PORTER LLP

Holly Logue Prutz
Holly.Prutz@porter.com202.942.5243
202.942.5989 Fax
301.320.9950 Cell555 Twelfth Street, NW
Washington, DC 20004-1208

March 31, 2004

via **FACSIMILE**

Mail Stop 16
Director of the U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Re: U.S. Application No. 10/020,338
Filed: December 12, 2001
Title: Nucleic Acid Molecules and Other Molecules Associated
with Plants
Applicants: Scott E. ANDERSEN *et al.*
Atty. Docket: 16517.282/38-21(52272)B

Sir:

The following documents are forwarded herewith for appropriate action by the U.S. Patent and Trademark Office (PTO):

1. a Request for Refund of Improper Charge to Deposit Account (in duplicate); and
2. courtesy copies of a transmittal letter dated December 3, 2003, a request to rescind prior request and certification dated December 3, 2003, a petition for express abandonment in order to avoid publication dated December 3, 2003, a postcard receipt date-stamped by OIPE dated December 3, 2003; and deposit account statements for Deposit Account No. 50-2387 dated December 2003 and January 2004.

In the event that extensions of time beyond those petitioned for herewith are necessary to prevent abandonment of this patent application, then such extensions of time are hereby petitioned. Applicants do not believe any fees are due in conjunction with this filing. However, if any fees under 37 C.F.R. §§ 1.16 or 1.17 are required in the present application, including any fees for extensions of time, then the Commissioner is hereby authorized to charge such fees to Arnold & Porter Deposit Account No. 50-2387 referencing matter number 16517.282.

Respectfully submitted,



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Enclosures